

**INTERNATIONAL PRELIMINARY EXAMINATION REPORT**  
(PCT Article 36 and Rule 70)

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| Applicant's or agent's file reference<br><b>A21736M</b>   | <b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416) |   |
| International application No.<br><b>PCT/EP 03/02358</b>   | International filing date (day/month/year)<br><b>07.03.2003</b>  | Priority date (day/month/year)<br><b>07.03.2002</b> |
| International Patent Classification (IPC) or both national classification and IPC<br><b>A61K49/00</b> |  |   |
| Applicant<br><b>FUJI PHOTO FILM CO., LTD.</b>   |  |   |

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.



2. This REPORT consists of a total of 6 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of    sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the opinion
- II ☐ Priority
- III ☒ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

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| Date of submission of the demand<br><br><b>19.03.2003</b>   | Date of completion of this report<br><br><b>28.06.2004</b>  |
| Name and mailing address of the international preliminary examining authority:<br><br> European Patent Office - P.B. 5818 Patentlaan 2<br>NL-2280 HV Rijswijk - Pays Bas<br>Tel. +31 70 340 - 2040 Tx: 31 651 epo nl<br>Fax: +31 70 340 - 3016 | Authorized Officer<br><br><b>Vadot, P</b><br><br>Telephone No. +31 70 340-3968<br><br> |

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. **PCT/EP 03/02358**

**I. Basis of the report**

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

**Description, Pages**

1-47 as originally filed

**Claims, Numbers**

1-11 as originally filed

**Drawings, Sheets**

1/8-8/8 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).  
☐ the language of publication of the international application (under Rule 48.3(b)).  
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.  
☐ filed together with the international application in computer readable form.  
☐ furnished subsequently to this Authority in written form.  
☐ furnished subsequently to this Authority in computer readable form.  
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.  
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:  
☐ the claims, Nos.:  
☐ the drawings, sheets:

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5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

*(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)*

6. Additional observations, if necessary:

**III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application,

☒ claims Nos. 1-7 in part, 11

because:

☒ the said international application, or the said claims Nos. 11 relate to the following subject matter which does not require an international preliminary examination (specify):

**see separate sheet**

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

☒ no international search report has been established for the said claims Nos. 1-7 in part

2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

☐ the written form has not been furnished or does not comply with the Standard.

☐ the computer readable form has not been furnished or does not comply with the Standard.

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

|                               |             |                    |
|-------------------------------|-------------|--------------------|
| Novelty (N)                   | Yes: Claims | 9,10               |
|                               | No: Claims  | 1-8                |
| Inventive step (IS)           | Yes: Claims | 9,10               |
|                               | No: Claims  | 1-8                |
| Industrial applicability (IA) | Yes: Claims |                    |
|                               | No: Claims  | see separate sheet |

2. Citations and explanations

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see separate sheet

**INTERNATIONAL PRELIMINARY  
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**Re Item III**

**Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

1. Claim 11 relate to subject-matter considered by this Authority to be covered by the provisions of Rule 37.1 (iv) PCT. Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of these claims (Article 34(4)(a)(I) PCT).

2. No International Preliminary Examination will be carried out in respect of subject-matter which is not covered by the search report (Rule 66.1(e) PCT).

**Re Item V**

**Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

5.1 The following documents (D) are referred to in this communication; the numbering will be adhered to in the rest of the procedure:

D1: EP-A-1308480  
D2: WO-A-0212398  
D3: WO-A-9713490  
D4: EP-A-1152008

5.2. Novelty:

The PCT application D2 WO0212398 published before the priority date (14.02.2002) claims the priority date of 03.08.2001. Its content as filed is therefore considered as comprised in the state of the art relevant to the question of novelty, pursuant to Article 33.2 PCT. This document is in japanese but D1 EP1308480, which is the translation of the japanese document, has been published later (07.05.2003). The earlier application shows, as shown by the translation of D2 in D1, cyanine dyes used as antihalation dye in an photographic emulsion. Compounds 1-3,5-11,13-15,33,36,37,43-45,47 given in D1 and D2 are exactly the same as in the current application except the use is different: for manufacture of silverhalide photographic light-sensitive materials.

Thus, it is prejudicial to the novelty of the subject-matter of claims 1-8 of the present

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application.

Document D3 discloses contrasting agents for near infrared diagnosis made of cyanines wherein the nitrogen substituents can contain an amide bond.

Document D4 shows on a cyanine group R1 and R2 which can be an alkyl group substituted with a carboxyl group.

Documents D3 to D4 are prejudicial to the novelty so that the subject-matter of claims 1-7 is not new in the sense of Article 54(1) and (2) EPC.